IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT **PETITION NO.1421 OF 2005**

M/s.Vora Builders & Anr. ...Petitioners

Vs.

State of Maharashtra & Ors. ...Respondents

Mr. Rajeev Narulla i/b. Jhangiani Narulla &

Associates for the Petitioners

Mr. K.R. Belosey, AGP for Respondent Nos. 1 to 3.

CORAM: **F.I. REBELLO &**

MRS.V.K.TAHILRAMANI, JJ.

DATE: 8TH AUGUST 2006

P.C.

. Rule. Heard forthwith.

2. Petitioner No.1 was the owner of the land to which the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 and Rules, 1976 was applicable. In terms of the orders passed by the Respondents, petitioner No.1 as a developer and petitioner No.2 as the owner according to law and based upon the FSI had to make available to the respondents three flats. According to the petitioners they have already surrendered two flats. By excluding the internal area of roads and open spaces which cannot be counted

they are not bound to give the third flat.

3. On behalf of the Respondents it is submitted that though two flats have been made available they are not in a habitable condition. It is further pointed out that the area of the internal area and open spaces cannot be excluded and as such there is no illegality committed by the respondents.

4. Petitioners had relied on the definition clause namely Section 2(q)(i) which defines vacant land. It reads as under:-

> "Land on which construction of a building is not permissible under the Building Regulation in force in the area in which such land is situated.'

. Petitioners have also relied upon the Circular dated 11th August, 1989, which reads as under:-

> "While deciding the character of the scheme, area under all the D.P. roads and D.P.reservation area under notified slum etc. should be deducted. After making these deductions the character of the scheme is worked out. Certain area is required for internal roads and open spaces. After making

due allowance for internal roads and open spaces wherever required, the net FSI of the land is to be worked out this basis only. The number of tenements to be constructed and to be surrendered to Government should then be worked out."

5. On a consideration of the definition and Clause 6 of the Circular, it is not possible for us to accept the said contention. A joint reading of the definition and the Circular would make it clear that only D.P. Roads and D.P. reservation area under notified slum, etc., are to be excluded for the purpose of calculating vacant land. Once the vacant land is notified then what has to be considered is the FSI of the vacant land. In so considering, the FSi of the internal roads and open spaces is not to be considered. That does not mean that the internal roads and open spaces are to be excluded for the purpose of computing what is the vacant land available.

6. We find that though an argument is advanced based on vacant land, the only contention that could have been raised by the petitioners is that the FSi of the internal roads and open spaces could not be computed for finding out the F.S.I. available. On behalf of the respondents learned Counsel points out from the plan submitted by the petitioners

themselves, that the FSI of the roads and open spaces was not considered. This aspect was not considered by the authorities whose order is impugned before us.

7. Considering the above, the interest of justice would be met if the matter is remanded back to the authority to decide the contention as now advanced on behalf of the petitioners. After hearing the petitioners the Competent Authority to dispose of the same according to law at any rate not later than eight weeks from today.

. Writ Petition disposed of accordingly. No order as to costs.

(**F.I. REBELLO, J)**

(**MRS.V.K.TAHILRAMANI, J).**